

**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH**

**RSA No.3133 of 2004
Date of decision: 16.10.2007**

Mohan Lal and others

...Appellants

Vs.

Raja Ram and another

...Respondents

Present:- Mr.Parveen Kumar, Advocate for the appellants.

Mr.O.P.Nagpal, respondent for respondent No.1.

Vinod K.Sharma, J.(Oral)

Learned counsel for the appellants states that he wrongly stated that appellant No.1 has died. In fact, he is alive and being represented by counsel for the appellant. Consequently, there is no necessity to bring on record the legal representatives of appellant No.1 as ordered on 27.8.2007.

This Regular Second appeal has been filed against the judgment dated 27.11.2003 passed by the learned Appellate Court vide which suit filed by the plaintiff-appellant for separate possession has been ordered to be dismissed.

The plaintiff claimed separate possession of the property/plot on the basis of inherence of Madho Ram father of the appellant-plaintiff who was said to be having 11/50 share in the property in dispute. The suit was contested by the respondent-defendant No.1 on the plea that by way of sale deed dated 4.9.1972, Madho Rama agreed to sell his share in the property for a total sale consideration of Rs.4000/-, which was duly paid to him. However, sale deed could not be registered. It was case of the respondent –defendant No.1 that he was in possession of the property as an

exclusive owner thereof, and therefore, the plaintiff-appellant was not entitled to seek possession by way of partition as sought for.

Learned courts below on appreciation of evidence has dismissed the suit by coming to the conclusion that respondent-defendant No.1 is an exclusive owner of share of Madho Ram by virtue of sale deed dated 4.9.1972.

In coming to this conclusion, reliance was placed on the judgments of this Court in the cases of **Prem Singh vs. Daya Chand 1997 (1) L.J.R. 106, Gopal Singh vs. The Jamaiaipura Dheru Cooperative Joint Farming Society Ltd. 1988 P.L.R.300, Bhola Singh vs. Ratia 1988 R.L.R. 216.**

Learned counsel for the appellant has vehemently contended that the learned courts below have committed an error in dismissing the suit in spite of the fact that it was proved on record Madho Ram was owner of 11/50 share and no valid title has been transferred to respondent-defendant No.1 as the property for the sale consideration of Rs.4000/-, could not have been sold by way of un-registered document. Though, there is no force in the contention raised by the learned counsel for the appellant that no valid title passed on to the defendant No.1 by way of un-registered sale deed. The right of defendant-respondent to retain the possession of property in question is totally protected under Section 53-A of the Transfer of Property Act and the possession cannot be disturbed by the plaintiff-appellant. Consequently, once it is held that the possession of the respondent-defendant No.1 cannot be disturbed and he is entitled to protect the same, learned courts below were right in coming to the conclusion that the plaintiff-appellant has no right to maintain the suit for possession by way of

partition. There is no merit in present appeal nor any substantial question of law arises for consideration in this Regular Second Appeal.

Dismissed.

[Vinod K.Sharma]

Judge

16.10.2007

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